

**Princeton University
Department of Politics**

**POL 316 – Civil Liberties
Spring 2011**

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MW, 1:30-2:20 pm
001 Robertson Hall
office hours: by appointment via online scheduler

Preceptor: Herschel Nachlis (hnachlis@princeton.edu)

This course will examine how the United States has grappled with limits on government power. The course will survey the rights of individuals and the justifications for the use of force from the founding period to today. We will examine how the U.S. Supreme Court has interpreted the Constitution over time to define and enforce rights, but we will also be interested in how other courts and political actors have argued about, imagined, and tried to effectuate limits on government power.

The class is particularly concerned with thinking about American constitutionalism from a political perspective. Rather than abstracting constitutional law into ahistorical doctrines, we will situate constitutional debates within the political, social and intellectual environments within which they occur. We will be interested not only in the major decisions of the U.S. Supreme Court but also the debates and decisions that occur within the Court, Congress, the executive branch, the states, and the larger public sphere. In keeping with that goal, the material is arranged chronologically, rather than thematically. Hopefully as a result, we will see familiar issues in a new light, encounter unfamiliar issues that have been pushed into the background, and attend to the processes by which constitutional claims are asserted, contested, and settled.

Materials:

All readings are in Howard Gillman, Mark Graber, and Keith Whittington, *American Constitutionalism, vol. 2, Rights and Liberties*.

The manuscript exists in draft form in PDFs on the Blackboard website for the course. Some parts of the manuscript take the form of more or less complete chapters. Others will simply take the form of individual excerpts of primary readings or associated materials. All are in a somewhat rough state.

All readings will be available on the course website. No materials will be available for purchase.

Precepts:

There are four available precept times. Precepts are a required component of the class, and you must sign up for and regularly attend a precept. Regularly attending a precept is a necessary but not a sufficient condition for a passing grade in the participation component of the class. Participation in the precept constitutes a fifth of your grade in the class.

You will be expected to have at least skimmed that week's reading by the time of the first class meeting of the week. You will be expected to have thoroughly, carefully and thoughtfully read that week's materials by the time of your precept. You should arrive at the precept not only with your own questions about that week's lectures and materials, but also with your own thoughts and about both the substantive issues involved in those materials and the more general issue of how they shed light on the

workings of American constitutionalism. The preceptor may identify particular readings of special interest for the next precept.

Unless otherwise noted, the first meeting of the precepts will be in week 2.

Requirements:

The requirements of the course include both written and oral components. To obtain a passing grade for the course, a student must fulfill **all** the course requirements. Thorough preparation for, and faithful attendance at, lectures and precepts is among those requirements. In particular, you will be expected to arrive at precepts fully familiar with the assigned material and prepared to discuss the issues and concepts raised that week. Participation in precept will constitute a fifth of your grade.

You will be required to complete three written assignments, consisting of one simulation paper, one midterm take-home exam, and one final exam. The take-home midterm will be made available on the course website on Thursday, March 24 and will be due in class at 1:30 pm on **Monday, March 28**. The final exam will be at the time and place designated by the Registrar's Office. The quality of your writing will be a factor in determining your grade on the written assignments. The take-home exam will be penalized one full letter grade if it is handed in after 1:30 pm but before 5:00 pm on the due date. Exams will not be accepted after 5:00 pm on the due date.

The simulation will take place in precepts during week 5. The simulation exercise will be posted on the course website during week 4. A short paper (3-5 page paper) derived from the simulation exercise will be due in class on **Monday, March 7**.

The lectures are designed to supplement and complement, but not to simply repeat, the readings and the discussion in precept. Likewise, the precepts will complement, and not simply repeat, the subjects covered in lecture. Everything covered in the readings, the lectures, and the precept discussions is eligible for inclusion on the exams.

Your grade for the course will be calculated using the following formula:

Simulation Paper 5%
Midterm 35%
Final Exam 40%
Participation 20%

You may appeal any written grade within two weeks of receiving it. In order to appeal a grade, submit a copy of the exam and a short (500 words) written statement as to what error you think was made in your initial grade. A different preceptor will then grade your paper from scratch. The new grade may be **either higher or lower** than the original, and will be final.

The grading is standardized across precepts. Your final grade will not be affected by which precept you attend, though your preceptor has first responsibility for grading your work.

Schedule:

Introduction

Week 1: Constitutionalism and the Tradition of Liberty

Introductions and Appendix

Chapter 3, Introduction

The Virginia Declaration of Rights (ch. 3)
A Declaration of Rights of the Inhabitants of Pennsylvania (ch. 3)
Records of the Federal Constitution (ch. 3)
George Mason, Objections to the Federal Constitution (ch. 3)
Pennsylvania Ratification Debates (ch. 3)
Address and Reasons of the Dissent of the Minority (ch. 3)
Federalist 84 (ch. 3)
Amendments Proposed by the Virginia Convention (ch. 3)
Jefferson and Madison Correspondence (ch. 3)
Debates in the First Congress (ch. 3)
Reactions to the Bill of Rights (ch. 3)

Early Republic

Week 2: Forming the Republic (Speech and Religion)

Chapter 4, Introduction

Constitution of the South Carolina (ch. 3)
Bill Establishing a Provision for Teachers of the Christian Religion (ch. 3)
James Madison, Memorial and Remonstrance (ch. 3)
An Act for Establishing Religious Freedom (ch. 3)
First Congress, The Debate over Conscientious Objectors (ch. 3)
Adams and Franklin, Universal Male Suffrage (ch. 3)
Drafting Convention, Debate over Property Qualification (ch. 3)
John and Abigail Adams, Remember the Ladies (ch. 3)
Thomas Jefferson, To the Danbury Baptists (ch. 4)
Massachusetts Debates Test Oaths (ch. 4)
The Debate over Thanksgiving Proclamations (ch. 4)
People v. Ruggles (ch. 4)
George Washington, Letter to the Jews of Newport (ch. 4)
The Sedition Act of 1798 (ch. 4) (read section)
Commonwealth v. Sharpless (ch. 4)

Jacksonian Era

Week 3: Rethinking Democracy (Race and Religion)

Chapter 5, Introduction

Phillips, The Constitution, a Pro-Slavery Compact (Ch. 5)
Douglass, The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery? (Ch. 5)
Parker, The Law of God and the Statutes of Men (Ch. 5)
Lord, "The Higher Law" and its Application to the Fugitive Slave Bill (Ch. 5)
Webster, Seventh of March Speech (Ch. 5)
Sunday Mails (ch. 5)
The Debate over Catholic Schools in New York City (ch. 5)
Donahue v. Richards (ch. 5)
The Post Office Controversy (Ch. 5)
Dred Scott v. Sandford (ch. 5)
Roberts v. City of Boston (ch. 5)
Stanton, Keynote Address (ch. 5)

Week 4: Property and Personal Liberty

Calder v. Bull (ch. 4)
Marbury v. Madison (ch. 4)
Fletcher v. Peck (ch. 4)
University of North Carolina v. Foy (ch. 4)
Barker v. People (ch. 4)
Charles River Bridge v. Warren Bridge (ch. 5)
Mayor and Aldermen of Mobile v. Yuille (ch. 5)
Wally's Heirs v. Kennedy (ch. 5)
Wynehamer v. People (ch. 5)
State v. Buzzard (ch. 5)
State v. Reid (ch. 5)
People v. Gallagher (ch. 5)
Leggett, Monopolies (ch. 5)

War and Reconstruction

Week 5: War and Martial Law

Ch. 6, introduction
The Second Confiscation Act (ch. 6)
Norris v. Doniphan (ch. 6)
Ex parte Garland (ch. 6)
Cummings v. Missouri (ch. 6)
Green v. Shumway (ch. 6)
The Trial of Clement Vallandigham (ch. 6)
Ex parte Merryman (ch. 6)
Lincoln and the New York Democrats debate Habeas Corpus (ch. 6)
The Habeas Corpus Act of 1863 (ch. 6)
Ex parte Milligan (ch. 6)
Ex parte McCordle (ch. 6)

Week 6: New Foundations (Race and Gender)

The Thirteenth Amendment (ch. 6)
The Fourteenth Amendment (ch. 6)
The Fifteenth Amendment (ch. 6)
The Slaughter-House Cases (ch. 6)
Douglass, The Mission of the War (ch. 6)
State Convention of the Colored People of South Carolina, Memorial (ch. 6)
Andrew Johnson, Veto Message (ch. 6)
Thomas Cooley, Constitutional Limitations (ch. 6)
The Senate Debate on Asians (and Gypsies) (ch. 6)
The Civil Rights Act of 1866 (ch. 6)
In re Turner (ch. 6)
Clark v. Board of School Directors (ch. 6)
State ex rel Garnes v. McCann (ch. 6)
Bradwell v. State (ch. 6)
Minor v. Happersett (ch. 6)

Spring Break

Constructing the Modern State

Week 7: Liberty and Property

ch. 7, introduction
Hurtado (ch. 7)
Stone v. Mississippi (ch. 7)
Mugler v. Kansas (ch. 7)
Munn v. Illinois (ch. 7)
In re Jacobs (ch. 7)
Lochner v. New York (ch. 7)
Muller v. Oregon (ch. 7)
Ah Lim v. Territory of Washington (ch. 7)
Jacobson v. Massachusetts (ch. 7)
Pierce v. Society of Sisters (ch. 7)

Week 8: Democratic Struggles (Speech, Religion, Race and Gender)

Bradfield v. Roberts (ch. 7)
Reynolds v. United States (ch. 7)
People v. Pierson (ch. 7)
Commonwealth v. Davis (ch. 7)
U.S. v. Harmon (ch. 7)
Abrams v. United States (ch. 7)
Whitney v. California (ch. 7)
Civil Rights Cases (ch. 7)
Plessy v. Ferguson (ch. 7)
Doris Stevens and Alice Hamilton, The Blanket Amendment: A Debate (ch. 7)

The Rights Revolution

Week 9: Reorienting the Court (Property, Speech, and Liberty)

Ch. 8, introduction
Palko v. Connecticut (ch. 8)
Carolene Products (ch. 8)
West Coast Hotel v. Parrish (ch. 8)
Williamson v. Lee Optical (ch. 8)
Hague v. CIO (ch. 8)
Dennis v. United States (ch. 8)
Sullivan v. New York Times (ch. 8)
Brandenburg v. Ohio (ch. 8)
Roth v. United States (ch. 8)
Miller v. California (ch. 8)
Griswold v. Connecticut (ch. 8)
Roe v. Wade (ch. 8)

Week 10: New Constituencies (Race, Gender, Religion)

Brown v. Board of Education (ch. 8)
Bolling v. Sharpe (ch. 8)

Milliken v. Bradley (ch. 8)
Shelley v. Kramer (ch. 8)
Loving v. Virginia (ch. 8)
University of California v. Bakke (ch. 8)
Frontiero v. Richardson (ch. 8)
Craig v. Boren (ch. 8)
Rostker v. Goldberg (ch. 8)
Everson v. Board of Education (ch. 8)
Engle v. Vitale (ch. 8)
Lemon v. Kurtzman (ch. 8)
John F. Kennedy, Speech to the Greater Houston Ministerial Association (ch. 8)
Sherbert v. Verner (ch. 8)

The Modern Era

Week 11: Religion, Liberty and War

Ch. 9, introduction
Ronald Reagan, Speech to National Religious Broadcasters (ch. 9)
Wallace v. Jaffree (ch. 9)
Lee v. Weisman (ch. 9)
Rosenberger v. University of Virginia (ch. 9)
Locke v. Davey (ch. 9)
Employment Division v. Smith (ch. 9)
Tabbaa v. Chertoff (Ch. 9)
Parker v. Hurley (ch. 9)
Washington v. Glucksberg (ch. 9)
Planned Parenthood v. Casey (ch. 9)
Lawrence v. Texas (ch. 9)
Detention Cases (ch. 9)
Congressional Research Service, Presidential Authority to Conduct Warrantless Electronic Surveillance (ch. 9)
DOJ Paper on NSA Activities (ch. 9)

Week 12: Speech, Race, and Gender

Texas v. Johnson (ch. 9)
Virginia v. Black (ch. 9)
New York v. Ferber (ch. 9)
American Booksellers Assn. v. Hudnut (ch. 9)
Citizens United v. Federal Elections Commission (ch. 9)
Adarand v. Peña (ch. 9)
Parents Involved in Community Schools v. Seattle School District (ch. 9)
Grutter v. Bollinger (ch. 9)
Johnson v. Transportation Agency (ch. 9)
Roberts v. United States Jaycees (ch. 9)
United States v. Virginia (ch. 9)